Supreme Court, U.S.
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No. 96-617

In the
Supreme Court of the United States
October Term, 1996

HYLAND HILL NORTH CONDOMINIUM ASSOCIATION, INC.,
Petitioner,

and

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,
Intervenor,

vs.

HYLAND HILL CO., et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. DID THE MINNESOTA SUPREME COURT'S TREATMENT OF THE JURY VERDICT VIOLATE THE SEVENTH AMENDMENT'S GUARANTEE OF TRIAL BY JURY?

2. DID THE MINNESOTA SUPREME COURT'S TREATMENT OF THE JURY VERDICT VIOLATE THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS?

PARTIES TO THE PROCEEDING IN THE MINNESOTA SUPREME COURT

Appellants before the Minnesota Supreme Court:

Hyland Hills Co.
Gittleman Corporation
Diversified Management Co.
Gittleman Management Corp.
Melvin C. Gittleman
Donald W. Anderson

Respondent before the Minnesota Supreme Court:

Hyland Hill North Condominium Association, Inc.

Pursuant to Rule 29.06 of this Court, Hyland Hills Co., Gittleman Corporation, Diversified Management Co. and Gittleman Management Corp. state that none of them have parent or subsidiary companies.

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OPINIONS BELOW

1. 549 N.W.2d 617 (Minn. 1996)

2. 538 N.W.2d 479 (Minn. App. 1995)

BASIS FOR JURISDICTION

Jurisdiction in this Court is conferred by 28 U.S.C. §§ 1257(a) and 2101(c). The Minnesota Supreme Court entered its opinion on June 6, 1996, and denied both Petitions for Rehearing on July 17, 1996. The Petition for Writ of Certiorari was filed by mail and, to Respondent's understanding, was postmarked October 15, 1996, which is timely under Supreme Court Rules 13 and 29.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment VII:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment XIV, Section 1:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This lawsuit was brought by a condominium owners' association against six defendants (herein "the Developer"), who developed and managed the property. The Plaintiff made claims for defects in various different parts of the building.

The jury was asked to assess two categories of defects in the building: "roof defects" and "non-roof defects." As to each category, the Plaintiff sought damages under four different theories; (1) common-law negligence, (2) statutory express warranties, (3) statutory implied warranties, and (4) other warranties.

The jury awarded damages for "roof" and for "non-roof" defects under each theory. (See Petition for Writ of Certiorari, pp. 4-5) It granted much larger awards under negligence theory than under the warranty theories. (See Id.)

The Minnesota Supreme Court held that the Plaintiff's negligence claims (as well as its claims for non-statutory warranties) were barred by limitations. Thus, the Plaintiff could recover damages only for breach of statutory warranties.

The Plaintiff argued that it should nevertheless receive all the sums awarded, for negligence as well as for the warranty claims. It argued that the negligence awards should be deemed to be for breach of statutory warranties, and thus not barred by limitations.

The Plaintiff pointed out that the aggregate jury award under all four theories was exactly the amount which it had claimed for "roof" defects and almost exactly the amount

which it had claimed for "non-roof" defects. The Plaintiff argued that the jury must have intended to grant it the full sums claimed, regardless of legal theory.

The Minnesota Court of Appeals agreed with the Plaintiff's argument. It held, "[W]e have no doubt but that the special verdict form simply left the jury feeling compelled to split up the total damages amongst the three [sic] different theories of liability offered." 538 N.W.2d at 486. (A-30)

The Developer sharply contested this point in both appellate courts. It cited evidence which could have led the jury to award more damages under breach-of-warranty theories, and to intend that the sums for the various theories not be added together.[1]

The Minnesota Supreme Court agreed with the Developer. It held that the jury's award was "neither ambiguous nor inconsistent," and therefore was not subject to revision based on the jury's supposed "intent." See 549 N.W.2d at 624. (Petition, A-16 to A-17)

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[1] Among other matters, the Developer pointed out that the new roof which was placed on the building involved many features which the original roof did not have. Before the roof was replaced, an inspection firm prepared a "worst case" estimate of $200,000 to replace it (the jury subsequently fixed negligence damages at exactly this sum). After getting the estimate, the Association refused an offer by the roofing firm and the Developer to make the building watertight, and installed an improved roof costing some $350,000 (the sum which it claimed for the "roof" defects). The jury thus may have intended the Association's maximum recovery to be $200,000. It also may have granted less damages for warranty because the roof served roughly half its projected 15-year life.

The Supreme Court applied the law straightforwardly to the jury's findings of fact. It ordered judgment based on the sums awarded for statutory warranties. The Court held that the sums awarded under other theories were barred by the applicable statute of limitations. See Id.

ARGUMENT

I. THE MINNESOTA SUPREME COURT'S TREATMENT OF THE JURY VERDICT DID NOT VIOLATE THE SEVENTH AMENDMENT'S GUARANTEE OF TRIAL BY JURY.

A. The Seventh Amendment does not apply to trials in state courts.

The Seventh Amendment to the U.S. Constitution provides as follows:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

(emphasis added)

It is well settled that this Seventh Amendment guarantee applies only to cases tried in federal court. It does not govern state court proceedings. See Minneapolis & St. Louis Railroad Co. v. Bombolis, 241 U.S. 211, 217 (1916); accord, Georgia v. McCollum, 505 U.S. 42, 52 (1992)

("States do not have a constitutional obligation to provide a jury trial in civil cases").

Petitioner cites no authority criticizing these holdings. (See Petition for Writ of Certiorari, pp. 7-9) Respondent is unaware of any case or commentary suggesting that they are unsound. See e.g., Matter of Jacobs, 44 F.3d 84, 89 (2nd Cir. 1994) (litigant's claim that the Seventh Amendment applies to state proceeding is a "flawed assertion"; State ex rel. Douglas v. Schroeder, 222 Neb. 473, 384 N.W.2d 626, 629 (1986) (Seventh Amendment "does not apply in state courts"); 2 R. Rotunda and J. Nowak, Treatise on Constitutional Law § 17.8, p. 652 n.12 (2d Ed. 1992) (Seventh Amendment "is not applicable to state court proceedings").

Petitioner offers no historical or juridical rationale for applying the Seventh Amendment's jury trial guarantee to state courts. On the face of the matter, Petitioner's Seventh Amendment argument has no merit. This Court, accordingly, should reject the Petition for Writ of Certiorari.

B. Even if the Seventh Amendment were held to apply to this case, the Minnesota Supreme Court did not violate its provisions.

Even if this Court were to consider the possibility of applying the Seventh Amendment to the States through the Due Process Clause of the Fourteenth Amendment, such an application would not change the result in the present case. The Minnesota Supreme Court clearly did not violate the Seventh Amendment's specific guarantees.

The Minnesota Supreme Court did not "re-examine" a "fact tried by jury." Instead, the Court steadfastly declined to re-examine the jury's findings. It applied the law to the findings of fact precisely as they were rendered.

The findings of fact themselves were explicit and unambiguous. But the jury's intention concerning the ultimate impact of the findings (if the jury had any specific intent of that nature) was entirely unclear.[2]

The jury conceivably may have intended what the Petitioner claims it intended (although, if that were the case, the verdict is framed in a very curious way).[3] On the other hand, the jury may well have intended to do what it said it was doing -- i.e., grant a larger sum for negligence than it did for breach of warranty.

The Minnesota Supreme Court correctly declined to speculate concerning the subjective intent of the jury. Instead, it applied the objectively unambiguous language of the findings of fact exactly as they were written. See 549 N.W.2d at 624 (Petition, A-16 to A-17) This clearly was not a "re-examination" of findings of fact repugnant to the terms of the Seventh Amendment.

In sum, the Seventh Amendment argument has no merit. The Petition for Certiorari should be rejected.

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[2] This point distinguishes the various cases which Petitioner cites in support of its Seventh Amendment argument. (See Petition pp. 7-9) In those cases, only a single plausible inference was available concerning the jury's intent.

[3] If the jury simply felt "compelled to split up the total damages amongst the three different theories of liability," it presumably would have split the damages into equal amounts. Petitioner offers no explanation why the jury would have allocated more damages to negligence than to the warranty theories.

II. THE MINNESOTA SUPREME COURT'S TREATMENT OF THE JURY VERDICT DID NOT VIOLATE THE FOURTEENTH AMENDMENT'S GUARANTEE OF DUE PROCESS.

Petitioner briefly contends that the Minnesota Supreme Court's action amounted to a "taking" of its property contrary to the Fourteenth Amendment. It cites no pertinent due process case law in support of this citation.[4]

Petitioner contends that the Minnesota Supreme Court "reduc[ed] the jury's damage award" and thereby took its property. (Petition, p. 10) However, the Court did not "reduce" the jury's damage award. It applied the statute of limitations to the jury's assessment of damages exactly as it was rendered.

Petitioner attacks the Minnesota Supreme Court's statement that "we are unconcerned with what the jury intended the outcome of the case to be." 549 N.W.2d at 624 (Petition, A-16). This statement, however, was not directed at the jury's findings of fact. Rather, it was directed at the

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[4] The sole case cited by the Petitioner is Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1 (1991). (Petition, p. 10) In Haslip, a state appellate court upheld a jury's damage award, and this Court affirmed the state court's holding against a due process attack.

Haslip sets out only the most general due process standards ("general concerns of reasonableness" and "objective criteria" versus "unlimited discretion"). Petitioner makes no attempt to relate its contentions in the present case even to those very general standards.

jury's hypothetical "intention" as to what would result from those findings regardless of applicable law.

The principle stated by the court was eminently proper in this context. The jury's intention is irrelevant, insofar as it relates to the application of law to the facts. A jury has no right to nullify statutes of limitation, supposing that it had an intention to do so.

The Minnesota Supreme Court's holding, thus, did not offend due process. In fact, it embodied due process principles against an attempt to nullify objective standards of law by speculating on jury "intent." It applied the plain language of the law to the plain language of the findings of fact.

In sum, Petitioner's due process argument has no merit. This Court should accordingly deny the Petition for Writ of Certiorari.

CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari.

November 14, 1996

Respectfully submitted,

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